

Forward Plan reference number: FP/581/12/19

Direct Award of the Integrated Community Equipment Service (ICES)	
Report to: Cabinet	
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 The current Integrated Community Equipment Service (ICES) provides equipment funded by either health or social care to allow frail, elderly or physically disabled people to live independently in their own home. In 2018/19 it delivered 138,000 items for 66,566 customers within the areas of Essex County Council and Thurrock Council. The service is currently delivered by Essex Cares Limited (ECL) under a contract with ECC which expires on 31 March 2020.
- 1.2 The purpose of this report is to ask Cabinet to agree to enter into an agreement with ECL for the provision of the ICES until 31 March 2023 (with the option to extend for a further two year period until 31 March 2025 and the relevant agreements with CCG partners and Thurrock Council regarding the funding and delegation of function to the Essex County Council (the Council)

2. Recommendations

- 2.1. Agree to contract with Essex Cares Limited (ECL) for the provision of the ICES for a period of 3 years commencing on 1 April 2020 with an option for ECC to extend for a further 2 years until 31 March 2025.
- 2.2. Agree to enter into the relevant revised Section 75 and Section 101 Agreements between Essex County Council, Thurrock Council, Castle Point and Rochford, Basildon and Brentwood, Thurrock, Mid Essex CCGs and Mid Essex Hospital Services NHS Trust and East Suffolk and North Essex NHS Foundation Trust which relate funding and delegation of function from these Partners to the Council.

3. Summary of issue

- 3.1 The forecast value of the Integrated Community Equipment Service (ICES) for 2019/20 is £12.7m and is delivered under a contract with Essex Cares Limited, a company wholly owned by the Council. The Council contracts on behalf of itself, Thurrock Council, four of the Essex Clinical Commissioning Groups (CCGs), Mid Essex Hospital Trust and East Suffolk and North Essex NHS

Foundation Trust ('the Partnership') who have all authorised the Council to exercise their powers to provide the equipment service. The partnership is effective because it maximises economy of scale and because, unlike NHS bodies, the Council can recover VAT paid.

- 3.2 Under the contract ECL purchases the equipment then ownership is transferred to the Council when it is delivered to the service user. ECL then repurchases the equipment that can be reused from the Council when it is no longer required. Any equipment that is unusable is then scrapped, at cost to the Council.
- 3.3 In October 2018 Cabinet agreed in report FP/235/08/18 to enter into a contract with ECL for the provision of the ICES until 31 March 2020, and that additional recommendations would be made for the future sourcing options post April 2020.
- 3.4 Throughout 2019, the Partnership have benchmarked the current service against alternative options which included those used by other Local Authorities. The data and information gathered demonstrated that the Council's current relationship with ECL provides a cost effective and good quality service to Essex residents. ECL carry out a customer satisfaction survey monthly with a proportion of their customers, and year to date have a 98% satisfaction rate. The service offer from ECL continues to develop delivering efficiencies and ECL's knowledge of both health and social care networks enhances the service offer. In addition to these benefits, the Council and the Partnership avoid the extra cost and resources required to procure and transfer the service to an alternative provider, that could be utilised to develop the current offer further.
- 3.5 The evaluation of options led the Partnership to recommend to the Council a direct award to ECL for the provision of ICES from 1 April 2020 until 31 March 2023 with the option to extend for a further 2-year period.
- 3.6 During 2019, Partners have worked together to develop efficiency and performance of the ICES. The Partnership sees the value in continuing to support the improvements in this service with ECL.
- 3.7 The Partnership have held successful discussions with ECL to explore opportunities for a future model commencing on 1 April 2020. This focussed on developing innovation, different ways of supplying equipment, financial efficiencies, and to establish closer and more fluent integration between health and social services with improved discharge pathways, and an improved offer for digital solutions in this market.
- 3.8 The completion of these discussions has led to several bespoke system efficiencies to be included in the contract with ECL with effect from 1 April 2020, specifically:
 - 3.8.1 Absorption of Consumer Prices Index (CPI) inflation up to 3% per annum by ECL – therefore the price paid by the Council is fixed for the duration

of the contract, unless CPI increases beyond 3% where the Council will pay the difference above 3%.

- 3.8.2 Agreement for the Council to buy stock upon expiry of the contract at a capped value of £950,000 with a 10% reduction per contract year. This is lower than the stock buy-out cost in the current ICES contract, which is capped at £1,000,000
- 3.8.3 Improvement targets for increased refurbishment and reuse of stock, reducing the volume of new stock bought into the system therefore reducing waste and duplicated cost. These targets are enshrined in the contract as a performance metric, however there are no formal contractual incentives or penalties associated with them. The contractor's performance will inform future procurement options for the service.
- 3.9 In order to ensure that the future service continues to be innovative, delivers best value and maximises digital solutions, it is proposed that the Partnership will build processes into the contract to benchmark the Essex service nationally. This will be at regular intervals throughout the contract term, and the first benchmarking report completed by the Council 18 months into the contract, by October 2021. The outcome of this report will not have any contractual consequences for ECL and will not permit termination of the contract, however, it will shape the future options for commissioning this service.
- 3.10 Demand for the equipment fluctuates. Therefore, contingency payment capped at £200,000 for the contract life has been agreed, which may only be used in the event of significant reduction in demand. This is designed to help sustain the service operation should there be an unplanned decrease in activity. ECL will absorb a share of the cost before the payment can be released. The payment can only be used to support the functioning of the service, and not contribute to ECL profit.
- 3.11 In order to ensure a continued service to Essex residents whilst the future model is further considered, it is proposed that the Partnership will contract with ECL on the basis of the commercial terms outlined in this report until 31 March 2023 with an option of a further 2 years until 31 March 2025.
- 3.12 The Partnership will also enter into the corresponding agreements with the Council which run alongside the ICES contract. The Council will not enter into a new agreement with ECL unless the new agreements are in place.
- 3.13 The recommendations in this paper have been agreed by the Strategic Review Board, the board for the ICES comprising of all Partners, which oversees the strategic direction of the equipment service.

4. Options

- 4.1. **Option One - Do nothing and allow the contract to expire on 31 March 2020** - this is not a recommended option as it will result in the service ceasing to exist on 31 March 2020 and creating unmet demand and leading to delayed hospital discharges and a reduction in the amount of residents that are able to continue to live independently and in their own homes.
- 4.2. **Option two – Direct award the contract to ECL until 31 March 2023 with a further option of 2 years until 31 March 2025 on the terms set out in this report (Preferred) -** This will allow the service to continue to develop and innovate and to guarantee continuation of service and to allow for flexibility on the demands and design of the service in the future.
- 4.3 **Option three - Continue with the current contract until 31 March 2020 then run a full open market procurement process** - this is not a recommended option as current service developments and improvements, combined with potential exit costs, plus the significant time and resources required to run the full procurement process, no longer guarantee that this arrangement would be best value for the Council and the Partnership. The benchmarking exercise undertaken this year does not indicate that the procurement of a new provider would be likely to lead to a service that is better value or quality.

5. Next steps

- 5.1. If Cabinet agrees to support the recommendations in this report:

- * a new contract will be awarded to ECL commencing on 1 April 2020 until 31 March 2023 with an option of a further 2 years until 31 March 2025.
- * a new Section 75 agreements will be entered into with NHS Partners and the corresponding section 101 agreement with Thurrock Council to facilitate the funding arrangements and delegation of functions from Partner to the Council.

6. Issues for consideration

6.1 Financial Implications

- 6.1.1 The annual cost of the proposed direct award to ECL is expected to be in the region of £12.7m, assuming volumes are in line with current levels. Of this, £8.7m would fall to ECC and £4m to the partners. The actual value will vary depending on the volume and mix of equipment commissioned. The Council's share of the cost of the contract is allowed for within the draft 2020/21 budget; any increase in expenditure will need to be contained within existing resources.
- 6.1.2 The table below sets out the 2018/19 value of equipment spend for the current contract, along with the forecast outturn for the current financial year and the anticipated budget for the Council and partners for the three-year contract period, as set out in the draft Medium-Term Resourcing Strategy (MTRS) for

2020/21 to 2022/23.

	2018/19 Actual £m	2019/20 Forecast at P7 £m	2020/21 Draft Budget £m	2021/22 MTRS £m	2022/23 MTRS £m
ECC	8.6	8.7	8.7	8.8	8.8
Partners	3.7	4.0	4.0	4.0	4.0
Total Pooled Fund	12.3	12.7	12.7	12.8	12.8

It should be noted that:

- 6.1.2.1 The costs of Pressure Area Cushions (PAC) have been excluded from 2018/19 expenditure as these are no longer provided through the contract
- 6.1.2.2 The slight increase in planned ECC spend is due to expected volume increases in the Children and Families and Education Function
- 6.1.2.3 Spend for partners in future years assumes volume and activity will continue at current levels. However, the Section 75 agreement will set out that costs are invoiced to the attributable partner, which means there is no risk that an increase in spend from partners would impact ECC's finances.
- 6.1.3 As referenced in paragraph 3.8.1, the cost of inflation will be absorbed up to 3%, by the application of fixed tariff prices. CPI at October 2019 is 1.5%; this would represent maximum cost avoidance savings of £355,000 (7.7%) over five years if inflation remains at this level for the life of the contract. However, the draft MTRS assumes no inflation on the equipment contract, in line with previous contracts, so this is cost avoidance rather than a cashable saving.
- 6.1.4 There is a risk that if CPI goes above 3% then the tariffs would increase, and the Partnership will have to pay the difference. For example, based on 2018/19 costs, if CPI increases to 4% by April 2020 the tariff prices would need to increase by 1%, which would represent an increased cost to the Partnership of £144,000 over the three-year contract period, or £243,000 over a five-year contract period.
- 6.1.5 The annual 10% reduction in stock exit costs with capped stock value of £950,000 in 3.8.2 represents a reduction in contract exit costs to the Partnership, which are up to £1m in the current contract. The reduction in stock value over the life of the contract is set out in the following table:

	Year 1	Year 2	Year 3	Year 4	Year 5
	£000	£000	£000	£000	£000
Opening value of stock	£950	£855	£770	£693	£623
10% reduction in value	(£95)	(£86)	(£77)	(£69)	(£62)
Closing value of stock	£855	£770	£693	£623	£561

6.1.6 The demand reduction contingency payment described in paragraph 3.10 is designed to provide short term financial support to the Provider in order to give the opportunity for it to right-size its costs in the event of an unexpected reduction in demand. For example, application of the payment which could avoid a permanent increase in tariff prices. The contingency payment is capped at £200,000 across the life of the contract and equates to 1.6% of the annual contract value.

6.1.7 A report was presented to Cabinet on 22 October 2019 (FP/494/08/19) on the Procurement of a new care technology service for adult social care. The current ICES contract includes £15,000 in relation to manual handling charge for care technology but as this is a planned reduction it will not fall within the scope of the contingency payment referenced in paragraph 3.10.

6.2. Legal Implications

6.2.1 Regulation 12 of Public Contracts Regulations 2015 permits the direct award of contracts to a local authority trading company which meets the necessary requirements. ECL currently meets those requirements.

6.2.2 The proposed service requires a complex legal structure, which will need to be maintained and updated over the life of the scheme. Excellent contract management will, therefore, be vital to the success of this scheme.

6.2.3 The Council (via ECL) then provides the total equipment service to the NHS and Local Government Partners who are subscribers to the equipment service.

6.2.4 This relationship is governed by the Council entering into a contractual arrangement with each Partner; each of which is identical in terms; pursuant to section 75 National Health Service Act 2006 for NHS bodies and section 9EA of the Local Government Act 2000 and section 101 of the Local Government Act 1972 for local authority partners.

6.2.5 This set of contracts creates a pooled budget, appoints the Council as the lead Partner for its management and gives the Council the necessary delegations to procure and manage the service on behalf of all the Partners

6.2.6 These individual agreements between ECC and each partner, will record the governance and supporting administrative arrangements which underpin the pooled budget and operation of the ICES.

- 6.2.7 Any new partners to the scheme will have to enter into a contract with the Council on the same terms as the current Partners and also enter into an appropriate agreement
- 6.2.8 The overall legal structure of the scheme is not affected by the proposed changes. The overall scheme has VAT implications which were reviewed by PwC. The review affirmed that the scheme complies with the direction and guidance issued by the Department of Health following the introduction of the Better Care Fund provisions. The scheme has been structured following HMRC guidelines to create a pooled budget with the Council as lead Partner.
- 6.2.9 This means that the VAT regime of the Council as lead partner will determine the VAT recovery for the service. This means that any VAT incurred in the purchase of goods and services required to deliver the scheme can be recovered under section 33 of the Value Added Tax Act 1994, where the supply has incurred tax and relates to the Council's non-business activities for VAT purposes.
- 6.2.10 ECL will place orders via a route complaint with the Public Contracts Regulations 2015 on behalf of the Council. The equipment will then be delivered to ECL and the Council is then invoiced in its capacity as the lead Partner of the pooled fund. This invoice will include VAT. The Council will then transfer the ownership of the newly procured equipment to ECL; this will also include VAT.
- 6.2.11 When a Partner orders equipment from ECL to be delivered to a service user, ECL will invoice the Council plus VAT and will be paid from the pooled fund. ECL collects equipment from the service user and credits the Council (as lead Partner for the pooled fund) for the value of the equipment. Any change to the legal structure of the scheme must take into account potential VAT implications. When a Partner orders the delivery or collection of equipment, ECL will invoice the Council plus VAT which will be paid from the pooled fund. This invoice will include a credit for all equipment that has been returned

7. Equality and Diversity implications

- 7.1. The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil

partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of Appendices

- 8.1 Appendix 1 – Equality Impact Assessment

8. List of Background papers

- 9.1 Cabinet Report - Procurement of Integrated Community Equipment Service, 20 February 2018, FP/048/01/18